

Message Text

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ORIGIN SS-25

INFO OCT-01 ISO-00 SSO-00 /026 R

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FM SECSTATE WASHDC
TO AMEMBASSY CAIRO PRIORITY
AMEMBASSY TUNIS PRIORITY
USMISSION GENEVA PRIORITY

C O N F I D E N T I A L STATE 269659

EXDIS

E.O. 11652: GDS

TAGS: ELAB, UN, TS, ILO

SUBJECT: ILO MEMBERSHIP: TUNISIA'S INITIATIVE

REFERENCE: GENEVA 9518

1. MINISTER SHAKER OF EGYPTIAN EMBASSY MET TODAY WITH
DEPUTY LEGAL ADVISER SCHWEBEL AT DEPT'S INVITATION TO
REVIEW DISPARATE VIEWS ON THE QUESTION OF WHETHER
ADOPTION BY AN ILO GENERAL CONFERENCE OF THE 1977 REPORT
OF THE COMMITTEE ON THE APPLICATION OF CONVENTIONS AND
RECOMMENDATIONS WOULD PREJUDICE ARAB LEGAL INTERESTS.
THEY PARTICULARLY ADDRESSED THE ARAB POSITION THAT THE
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COMPLIANCE MACHINERY OF THE ILO AS CARRIED OUT THROUGH THE
WORK OF THE COMMITTEE OF EXPERTS (AND PRESUMABLY THE COM-
MITTEE ON APPLICATION OF CONVENTIONS AND RECOMMENDATIONS)
"IMPLIES SOVEREIGNTY" AND THAT IT "CAN ONLY BE INVOKED
AGAINST MEMBERS THAT HAVE SOVEREIGNTY OR ADMINISTRATIVE
CONTROL OF A TERRITORY IN QUESTION".

2. SCHWEBEL MADE THE FOLLOWING POINTS.

(A) NOTHING IN EITHER THE ILO CONSTITUTION OR THE

PRACTICE OF THE ILO OR THE TERMS OF REFERENCE OF THESE
TWO COMMITTEES SUPPORTS THE VIEW THAT THE COMPLIANCE

MACHINERY OF THE ILO CAN ONLY BE INVOKED AGAINST A STATE
HAVING SOVEREIGNTY OVER THE TERRITORY IN QUESTION. THERE
IS NO ARTICLE OF THE CONSTITUTION OR THE STANDING ORDERS
THAT SO STATES OR IMPLIES.

(B) ARTICLES THAT HAVE BEEN CITED IN SUPPORT OF
THIS VIEW CLEARLY DO NOT SUPPORT IT, NAMELY, ARTICLES 19,
22 AND 35, AND ARTICLES 24 AND 26 OF THE ILO CONSTI-
TUTION. ARTICLE 19 CONCERNS THE CONFERENCE'S ADOPTION
OF CONVENTIONS AND RECOMMENDATIONS, COMMUNICATION OF
CONVENTIONS TO MEMBERS FOR RATIFICATION, MEMBERS BRINGING
SUCH COMMUNICATIONS TO THE ATTENTION OF THEIR COMPETENT
AUTHORITIES, AND THE POSITION OF FEDERAL STATES; THUS IT
DOES NOT BEAR ON MATTERS OF SOVEREIGNTY OR ADMINISTRATIVE
AUTHORITY THAT MAY RELATE TO CONVENTIONS IN FORCE.
ARTICLE 22 PROVIDES THAT MEMBERS SHALL MAKE AN ANNUAL
REPORT ON IMPLEMENTATION OF CONVENTIONS TO WHICH THEY ARE
PARTY; AGAIN, IT DOES NOT SPEAK TO SOVEREIGNTY OR AUTHORITY
OVER TERRITORY. ARTICLE 35 GOVERNS APPLICATION OF CON-
VENTIONS BY MEMBERS "TO THE NON-METROPOLITAN TERRITORIES
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FOR WHOSE INTERNATIONAL RELATIONS THEY ARE RESPONSIBLE",
INCLUDING TRUST TERRITORIES --PLAINLY A PROVISION NOT
APPLICABLE TO THE SINGULAR STATUS OF OCCUPIED TERRITORIES,
AND NOT A PROVISION WHICH IMPORTS THAT, IF AN OCCUPYING
POWER REPORTS TO THE ILO ON THE APPLICATION OF A CONVEN-
TION IN AN OCCUPIED TERRITORY, ITS STATUS AS AN OCCUPYING
POWER IS LEGALLY ENHANCED. ARTICLE 24 SAYS NOTHING OF
SOVEREIGNTY BUT CONCERNS REPRESENTATIONS NOT BY STATES
BUT BY WORKERS OR EMPLOYERS THAT A MEMBER HAS "FAILED
TO SECURE IN ANY RESPECT THE EFFECTIVE OBSERVANCE WITHIN
ITS JURISDICTION OF ANY CONVENTION TO WHICH IT IS A PARTY".
ARTICLE 26 DEVELOPS THE RIGHT OF A MEMBER TO COMPLAIN TO
THE ILO ABOUT ANOTHER MEMBER OBSERVING A CONVENTION WHICH
BOTH HAVE RATIFIED.

(C) ARTICLES 24 AND 26 DO EXPRESSLY OR IMPLIEDLY
ASSUME THAT THE MEMBER WHICH IS AN OBJECT OF A COMPLAINT
EXERCISES JURISDICTION, PRESUMABLY OVER A TERRITORY IN
WHICH THE CONVENTION IN QUESTION IS TO BE APPLIED. THAT
IS NATURAL, FOR STATES WOULD NOT BE CHARGED WITH OBSERVANCE
OF CONVENTIONS IN TERRITORIES NOT SUBJECT TO THEIR JURIS-
DICTION. BUT TO ACKNOWLEDGE THIS IS NOT AT ALL TO PASS
UPON THE DESIRABILITY OR LEGITIMACY OF WHAT IS A FACT:
THAT ISRAEL ADMINISTERS THE OCCUPIED TERRITORIES.

(D) IT IS IN FACT OF THE ESSENCE OF THE CONVENTIONS
ON THE LAW OF WAR ON WHICH THE ARAB STATES SO HEAVILY

RELY THAT THE OBLIGATIONS OF AN OCCUPYING POWER FLOW FROM ITS ACTUAL STATUS AS THE ADMINISTERING AUTHORITY. THE HAGUE REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND OF 1907 PROVIDE, IN ARTICLE 42, THAT: "TERRITORY IS CONSIDERED OCCUPIED WHEN IT IS ACTUALLY PLACED UNDER THE AUTHORITY OF THE HOSTILE ARMY. THE OCCUPATION EXTENDS ONLY TO THE TERRITORY WHERE SUCH AUTHORITY HAS BEEN ESTABLISHED AND CAN BE EXERCISED." ARTICLE 43 PROVIDES: "THE AUTHORITY OF THE LEGITIMATE POWER HAVING IN FACT PASSED
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INTO THE HANDS OF THE OCCUPANT, THE LATTER SHALL TAKE ALL THE MEASURES IN HIS POWER TO RESTORE...PUBLIC ORDER AND SAFETY, WHILE RESPECTING...THE LAWS IN FORCE IN THE COUNTRY." THE GENEVA CONVENTIONS FOR THE PROTECTION OF WAR VICTIMS OF 1949, INCLUDING THE FOURTH GENEVA CONVENTION, SIMILARLY PROVIDE THAT THE OCCUPYING POWER "EXERCISES THE FUNCTIONS OF GOVERNMENT" IN THE OCCUPIED TERRITORIES (ARTICLE 6) AND IS RESPONSIBLE FOR "THE ADMINISTRATION OF JUSTICE" AND FOR MAINTAINING THE "ORDERLY GOVERNMENT OF THE TERRITORY" (ART. 64).

(E) AT THE INITIATIVE OF EGYPT AND OTHER ARAB STATES, THE UN GENERAL ASSEMBLY RECENTLY ADOPTED A RESOLUTION CONDEMNING ISRAEL FOR VIOLATION OF THE FOURTH GENEVA CONVENTION --A CONVENTION WHICH ASSUMES THAT THE OCCUPYING POWER IS THE ADMINISTERING AUTHORITY OF THE OCCUPIED TERRITORIES. HOW THEN CAN IT PREJUDICE THE ARAB POSITION FOR ISRAEL TO BE TREATED AS THE AUTHORITY RESPONSIBLE FOR ADMINISTRATION OF THE OCCUPIED TERRITORIES IN RESPECT OF ILO CONVENTION 111? HOW CAN THE ARABS MAINTAIN THAT, AS THE OCCUPYING POWER UNDER THE HAGUE AND GENEVA CONVENTIONS, ISRAEL IS BOUND TO RESPECT THOSE CONVENTIONS AND TO ADMINISTER THE TERRITORIES IN ACCORDANCE WITH LOCAL LAW, BUT THAT ISRAEL IS NOT THE ADMINISTERING AUTHORITY IN RESPECT OF ILO CONVENTION 111?

(F) MOREOVER, APART FROM ISRAEL BEING A PARTY TO CONVENTION 111, ISRAEL'S APPLICATION OF CONVENTION 111 IS REQUIRED BY REASON OF THE FACT THAT JORDAN, EGYPT AND SYRIA ARE PARTIES TO IT; THAT THE WHOLE THRUST OF THE CONVENTION IS DIRECTED TOWARDS THE INTERNAL LAW OF STATES PARTIES; AND THAT ISRAEL IS LEGALLY REQUIRED TO APPLY THE LAW OF THE STATES WHOSE AUTHORITY IT HAS TEMPORARILY
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DISPLACED. ISRAEL'S REPLY TO THE ILO COMMITTEE IS NOT STATED TO BE BASED ON ITS OWN RATIFICATION OF THE CONVENTION. UNDER THE HAGUE AND GENEVA CONVENTIONS,

AS WELL AS CUSTOMARY INTERNATIONAL LAW, ISRAEL IS BOUND TO APPLY LOCAL LAW, INCLUDING THAT DERIVING FROM TREATIES HAVING (AS DOES CONVENTION 111) INTERNAL EFFECT. AS PROFESSOR ROBERTO AGO STATED AT THE JUNE 1977 ILO CONFERENCE: "ALLOW ME TO SAY THAT IT IS A VERY CLEAR AND UNQUESTIONED PRINCIPLE OF GENERAL INTERNATIONAL LAW GOVERNING THE DUTIES OF AN OCCUPYING POWER, IRRESPECTIVE OF WHETHER SUCH OCCUPATION IS LEGAL OR ILLEGAL, THAT THE OCCUPYING POWER, NO MATTER WHAT ITS POSITION MAY BE, IS OBLIGED TO OBSERVE ALL THE INTERNATIONAL CONVENTIONS IN FORCE IN THE TERRITORY OCCUPIED. ALLOW ME ALSO TO EMPHASIZE THAT THIS OBLIGATION OF INTERNATIONAL LAW CERTAINLY DOES NOT APPLY FOR THE BENEFIT OF THE OCCUPYING POWER, IT APPLIES FOR THE BENEFIT OF THE OCCUPIED TERRITORY. THE AUTHORS OF INTERNATIONAL LAW, THE PRACTICE OF STATES AND INTERNATIONAL JURISPRUDENCE ARE ALL IN AGREEMENT ON THIS." AGO PERTINENTLY ALSO POINTED OUT: "LET US BEGIN BY CONSIDERING THE FACTUAL DATA. IT IS A FACT THAT CONVENTION NO. 111 HAS BEEN RATIFIED BY JORDAN, THE SYRIAN ARAB REPUBLIC AND EGYPT AS WELL AS BY ISRAEL. THERE IS NO DOUBT THAT WHEN THE ISRAELI OCCUPYING FORCES ENTERED THOSE TERRITORIES THAT CONVENTION WAS IN FORCE THROUGHOUT THOSE TERRITORIES. ISRAEL, AS A PARTY TO THE CONVENTION, IS UNDER AN OBLIGATION TO APPLY IT, BUT EVEN IF ISRAEL WAS NOT A PARTY TO THE CONVENTION, IT WOULD BE UNDER AN OBLIGATION. AS AN OCCUPYING POWER WHICH HAS TO OBSERVE THE LEGAL ORDER OBTAINING IN THE OCCUPIED AREAS, IT IS UNDER AN OBLIGATION TO APPLY THE CONVENTIONS WHICH ARE IN FORCE IN THOSE OCCUPIED LANDS. I WOULD ALSO SAY, INCIDENTALLY, THAT IF MY MEMORY SERVES ME RIGHT, ISRAEL'S OBLIGATION TO APPLY THE PRINCIPLES ENSHRINED IN CONVENTION NO. 111 IN THE OCCUPIED TERRITORIES APPEARS IN CONFIDENTIAL

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THE RESOLUTION DATED 24 JUNE 1974 WHICH THE AUTHORS HAVE USED AS A BASIS FOR ALLEGING BREACHES OF THE CONVENTION BY ISRAEL."

(G) IN 1974, THE ARAB STATES MOVED THE ILO GENERAL CONFERENCE TO ADOPT A RESOLUTION CONDEMNING ISRAEL FOR FAILURE TO OBSERVE IN THE OCCUPIED TERRITORIES ILO CONVENTIONS 87 AND 111. THE RESOLUTION ITSELF NOTES THAT ISRAEL HAD RATIFIED THOSE CONVENTIONS. SINCE THE ARAB STATES THUS THEN MAINTAINED THAT ISRAEL WAS BOUND TO APPLY THESE CONVENTIONS IN THE OCCUPIED TERRITORIES AND HAD VIOLATED THEM, HOW CAN THEY NOW CONTEND THAT ISRAEL'S AFFIRMATION OF THE APPLICATION OF CONVENTION 111 CONSTITUTES ANY MEASURE OF RECOGNITION OF THE OCCUPIED TERRITORIES AS PART OF THE SOVEREIGN TERRITORY OF ISRAEL, OR OTHERWISE PREJUDICES THE ARAB POSITION ON ISRAEL'S STATUS IN THE OCCUPIED TERRITORIES?

(H) FOR ALL THE FOREGOING REASONS, IT ACCORDINGLY FOLLOWS THAT, WERE AN ILO GENERAL CONFERENCE TO ACCEPT THE 1977 REPORT AND ITS ANNEXES AS THEY STAND, INCLUDING THE REPORT BY ISRAEL ON WHAT IT CHOOSES TO DESCRIBE AS "ADMINISTERED AREAS", THE LEGAL AND POLITICAL POSITIONS OF THE ARAB STATES ON THE ILLEGITIMACY OF ISRAELI PRESENCE IN THE OCCUPIED TERRITORIES WOULD IN NO WAY BE PREJUDICED.

(I) FURTHERMORE, THE ARGUMENT THAT THE 1974 RESOLUTION OF THE GENERAL CONFERENCE CONCERNING THE OCCUPIED ARAB TERRITORIES DISPLACED THE AUTHORITY OF THE COMMITTEE OF EXPERTS AND THE COMMITTEE ON APPLICATION OF CONVENTIONS AND RECOMMENDATIONS IS UNPERSUASIVE. IT NOWHERE SO STATES. THE RESOLUTION INVITED THE GOVERNING CONFIDENTIAL

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BODY AND THE DIRECTOR-GENERAL TO SEEK AN END TO THE ISRAELI VIOLATIONS OF ILO CONVENTIONS TO WHICH IT REFERS AND REQUESTS THE DIRECTOR-GENERAL TO SUBMIT A REPORT; BUT IT BY NO MEANS DENIES TO THESE COMMITTEES, EXPRESSLY OR IMPLICITLY, THEIR CONSTITUTIONAL AND ESTABLISHED AUTHORITY TO DEAL WITH COMPLAINTS AGAINST THE GOVERNMENT OF ISRAEL, ON ACCOUNT OF ITS POLICIES IN THE OCCUPIED TERRITORIES OR OTHERWISE.

2. SHAKER TOOK IN FOREGOING ATTENTIVELY BUT DECLINED TO RESPOND SUBSTANTIVELY UNTIL HE HAD TIME TO REVIEW THE POINTS MADE, BECAUSE OF HIS RELATIVE UNFAMILIARITY WITH THE SUBJECT. HE UNDERTOOK TO COMMUNICATE THESE POINTS TO AMBASSADOR GHORBAL, EGYPTIAN LEGAL ADVISER EL-ARABY (WHO IS CURRENTLY AT UNGA) AND TO CAIRO AND TO BE BACK AT US SHORTLY.

3. SCHWEBEL THEN NOTED THAT, APART FROM SUCH LEGAL CONSIDERATIONS, IT WAS APPRECIATED IN THE DEPT THAT, IF SOME WAY COULD BE FOUND OF ADOPTING THE REPORT WHICH WOULD MODERATE PROBLEMS POSED BY REPLIES OF STATES CONTAINED IN THE ANNEXES TO IT, THAT WOULD BE MOST DESIRABLE. ONE POSSIBILITY THAT HAD BEEN RAISED BY AMBASSADOR EL-SHAFEI IN A CONVERSATION WITH AMBASSADOR VANDEN HEUVEL WOULD BE TO ADOPT THE REPORT AND THE ANNEXES WHILE SEPARATING OUT AND NOT TREATING THE ISRAELI REPLY. NOTING THAT HE WAS SPEAKING PERSONALLY, SCHWEBEL SAID THAT HE COULD NOT RECOMMEND THAT, AND DOUBTED THAT IT WOULD SATISFY THOSE WHO NEED TO BE SATISFIED, BECAUSE IT WOULD ENTAIL DISCRIMINATION AGAINST ONE MEMBER. HOWEVER,

SCHWEBEL WONDERED WHETHER THE FIRST PART OF THE COMMITTEE'S REPORT, THE "GENERAL REPORT", COULD BE ADOPTED IN A RESOLUTION WHICH ALSO WOULD SIMPLY "TAKE NOTE" OF THE ANNEXES WHICH INCLUDE COMMENTS OF MEMBERS.

HE SAID THAT THIS IDEA HAD NOT BEEN VETTED IN THE DEPT
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BUT THAT HIS IMPRESSION IS THAT, WHILE IT CERTAINLY WAS
NOT ESTABLISHED ILO PROCEDURE, THE ILO CONSTITUTION
WOULD NOT PREVENT IT. AND, HE ADDED, IT MADE SENSE FOR
THE ILO CONFERENCE NOT TO "ADOPT" THE INDIVIDUAL VIEWS
OF MEMBER STATES.

4. SHAKER INDICATED THAT THAT WAS A POSSIBILITY WHICH
MERITED CONSIDERATION, AND ASKED WHETHER SUCH A RESOLU-
TION COULD ALSO CONTAIN PASSAGES STATING THAT, IN
TAKING NOTE OF THE APPENDICES, THE ILO CONFERENCE DID NOT
NECESSARILY ACCEPT THE CONTENTIONS OF MEMBERS CONTAINED
THEREIN OR CLAIMS TO STATUS IN TERRITORIES COVERED BY THE
REPLIES OF MEMBERS. SCHWEBEL REPLIED THAT HE THOUGHT
THAT SUGGESTION WAS ATTRACTIVE AND THAT, FOR OUR PART, WE
WOULD GIVE IT EVERY CONSIDERATION.

6. SHAKER CONCLUDED THAT "EGYPT WANTS TO HELP" AND
DESIRES TO HAVE THE USG RESUME ILO MEMBERSHIP. HABIB

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APPROVED BY: IO/UNA:JFTEFFT

S/S-O:JGUNDERSEN

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C O N F I D E N T I A L STATE 269659

EXDIS FOR AMBASSADOR YOUNG FROM UNA

FOLLOWING TEL SENT ACTION CAIRO, TUNIS, GENEVA FROM STATE
NOV 11:

QUOTE C O N F I D E N T I A L STATE 269659

EXDIS

E.O. 11652: GDS

TAGS: ELAB, UN, TS, ILO

SUBJECT: ILO MEMBERSHIP: TUNISIA'S INITIATIVE

REFERENCE: GENEVA 9518

1. MINISTER SHAKER OF EGYPTIAN EMBASSY MET TODAY WITH DEPUTY LEGAL ADVISER SCHWEBEL AT DEPT'S INVITATION TO REVIEW DISPARATE VIEWS ON THE QUESTION OF WHETHER ADOPTION BY AN ILO GENERAL CONFERENCE OF THE 1977 REPORT OF THE COMMITTEE ON THE APPLICATION OF CONVENTIONS AND CONFIDENTIAL

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RECOMMENDATIONS WOULD PREJUDICE ARAB LEGAL INTERESTS. THEY PARTICULARLY ADDRESSED THE ARAB POSITION THAT THE COMPLIANCE MACHINERY OF THE ILO AS CARRIED OUT THROUGH THE WORK OF THE COMMITTEE OF EXPERTS (AND PRESUMABLY THE COMMITTEE ON APPLICATION OF CONVENTIONS AND RECOMMENDATIONS) "IMPLIES SOVEREIGNTY" AND THAT IT "CAN ONLY BE INVOKED AGAINST MEMBERS THAT HAVE SOVEREIGNTY OR ADMINISTRATIVE CONTROL OF A TERRITORY IN QUESTION".

2. SCHWEBEL MADE THE FOLLOWING POINTS.

(A) NOTHING IN EITHER THE ILO CONSTITUTION OR THE PRACTICE OF THE ILO OR THE TERMS OF REFERENCE OF THESE TWO COMMITTEES SUPPORTS THE VIEW THAT THE COMPLIANCE

MACHINERY OF THE ILO CAN ONLY BE INVOKED AGAINST A STATE HAVING SOVEREIGNTY OVER THE TERRITORY IN QUESTION. THERE IS NO ARTICLE OF THE CONSTITUTION OR THE STANDING ORDERS THAT SO STATES OR IMPLIES.

(B) ARTICLES THAT HAVE BEEN CITED IN SUPPORT OF THIS VIEW CLEARLY DO NOT SUPPORT IT, NAMELY, ARTICLES 19, 22 AND 35, AND ARTICLES 24 AND 26 OF THE ILO CONSTITUTION. ARTICLE 19 CONCERNS THE CONFERENCE'S ADOPTION OF CONVENTIONS AND RECOMMENDATIONS, COMMUNICATION OF CONVENTIONS TO MEMBERS FOR RATIFICATION, MEMBERS BRINGING SUCH COMMUNICATIONS TO THE ATTENTION OF THEIR COMPETENT AUTHORITIES, AND THE POSITION OF FEDERAL STATES; THUS IT DOES NOT BEAR ON MATTERS OF SOVEREIGNTY OR ADMINISTRATIVE AUTHORITY THAT MAY RELATE TO CONVENTIONS IN FORCE. ARTICLE 22 PROVIDES THAT MEMBERS SHALL MAKE AN ANNUAL REPORT ON IMPLEMENTATION OF CONVENTIONS TO WHICH THEY ARE PARTY; AGAIN, IT DOES NOT SPEAK TO SOVEREIGNTY OR AUTHORITY
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OVER TERRITORY. ARTICLE 35 GOVERNS APPLICATION OF CONVENTIONS BY MEMBERS "TO THE NON-METROPOLITAN TERRITORIES

FOR WHOSE INTERNATIONAL RELATIONS THEY ARE RESPONSIBLE", INCLUDING TRUST TERRITORIES --PLAINLY A PROVISION NOT APPLICABLE TO THE SINGULAR STATUS OF OCCUPIED TERRITORIES, AND NOT A PROVISION WHICH IMPORTS THAT, IF AN OCCUPYING POWER REPORTS TO THE ILO ON THE APPLICATION OF A CONVENTION IN AN OCCUPIED TERRITORY, ITS STATUS AS AN OCCUPYING POWER IS LEGALLY ENHANCED. ARTICLE 24 SAYS NOTHING OF SOVEREIGNTY BUT CONCERNS REPRESENTATIONS NOT BY STATES BUT BY WORKERS OR EMPLOYERS THAT A MEMBER HAS "FAILED TO SECURE IN ANY RESPECT THE EFFECTIVE OBSERVANCE WITHIN ITS JURISDICTION OF ANY CONVENTION TO WHICH IT IS A PARTY". ARTICLE 26 DEVELOPS THE RIGHT OF A MEMBER TO COMPLAIN TO THE ILO ABOUT ANOTHER MEMBER OBSERVING A CONVENTION WHICH BOTH HAVE RATIFIED.

(C) ARTICLES 24 AND 26 DO EXPRESSLY OR IMPLIEDLY ASSUME THAT THE MEMBER WHICH IS AN OBJECT OF A COMPLAINT EXERCISES JURISDICTION, PRESUMABLY OVER A TERRITORY IN WHICH THE CONVENTION IN QUESTION IS TO BE APPLIED. THAT IS NATURAL, FOR STATES WOULD NOT BE CHARGED WITH OBSERVANCE OF CONVENTIONS IN TERRITORIES NOT SUBJECT TO THEIR JURISDICTION. BUT TO ACKNOWLEDGE THIS IS NOT AT ALL TO PASS UPON THE DESIRABILITY OR LEGITIMACY OF WHAT IS A FACT: THAT ISRAEL ADMINISTERS THE OCCUPIED TERRITORIES.

(D) IT IS IN FACT OF THE ESSENCE OF THE CONVENTIONS ON THE LAW OF WAR ON WHICH THE ARAB STATES SO HEAVILY RELY THAT THE OBLIGATIONS OF AN OCCUPYING POWER FLOW FROM ITS ACTUAL STATUS AS THE ADMINISTERING AUTHORITY. THE HAGUE REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND OF 1907 PROVIDE, IN ARTICLE 42, THAT: "TERRITORY IS CONSIDERED OCCUPIED WHEN IT IS ACTUALLY PLACED UNDER THE AUTHORITY OF THE HOSTILE ARMY. THE OCCUPATION EXTENDS ONLY TO THE TERRITORY WHERE SUCH AUTHORITY HAS BEEN ESTABLISHED AND CAN BE EXERCISED." ARTICLE 43 PROVIDES: "THE AUTHORITY OF THE LEGITIMATE POWER HAVING IN FACT PASSED INTO THE HANDS OF THE OCCUPANT, THE LATTER SHALL TAKE ALL THE MEASURES IN HIS POWER TO RESTORE...PUBLIC ORDER AND SAFETY, WHILE RESPECTING...THE LAWS IN FORCE IN THE COUNTRY." THE GENEVA CONVENTIONS FOR THE PROTECTION OF WAR VICTIMS OF 1949, INCLUDING THE FOURTH GENEVA CONVENTION, SIMILARLY PROVIDE THAT THE OCCUPYING POWER "EXERCISES THE FUNCTIONS OF GOVERNMENT" IN THE OCCUPIED TERRITORIES (ARTICLE 6) AND IS RESPONSIBLE FOR "THE ADMINISTRATION OF JUSTICE" AND FOR MAINTAINING THE "ORDERLY GOVERNMENT OF THE TERRITORY" (ART. 64).

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(E) AT THE INITIATIVE OF EGYPT AND OTHER ARAB STATES, THE UN GENERAL ASSEMBLY RECENTLY ADOPTED A RESOLUTION CONDEMNING ISRAEL FOR VIOLATION OF THE FOURTH GENEVA

CONVENTION --A CONVENTION WHICH ASSUMES THAT THE OCCUPYING POWER IS THE ADMINISTERING AUTHORITY OF THE OCCUPIED TERRITORIES. HOW THEN CAN IT PREJUDICE THE ARAB POSITION FOR ISRAEL TO BE TREATED AS THE AUTHORITY RESPONSIBLE FOR ADMINISTRATION OF THE OCCUPIED TERRITORIES IN RESPECT OF ILO CONVENTION 111? HOW CAN THE ARABS MAINTAIN THAT, AS THE OCCUPYING POWER UNDER THE HAGUE AND GENEVA CONVENTIONS, ISRAEL IS BOUND TO RESPECT THOSE CONVENTIONS AND TO ADMINISTER THE TERRITORIES IN ACCORDANCE WITH LOCAL LAW, BUT THAT ISRAEL IS NOT THE ADMINISTERING AUTHORITY IN RESPECT OF ILO CONVENTION 111?

(F) MOREOVER, APART FROM ISRAEL BEING A PARTY TO CONVENTION 111, ISRAEL'S APPLICATION OF CONVENTION 111 IS REQUIRED BY REASON OF THE FACT THAT JORDAN, EGYPT AND SYRIA ARE PARTIES TO IT; THAT THE WHOLE THRUST OF THE CONVENTION IS DIRECTED TOWARDS THE INTERNAL LAW OF STATES
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PARTIES; AND THAT ISRAEL IS LEGALLY REQUIRED TO APPLY THE LAW OF THE STATES WHOSE AUTHORITY IT HAS TEMPORARILY DISPLACED. ISRAEL'S REPLY TO THE ILO COMMITTEE IS NOT STATED TO BE BASED ON ITS OWN RATIFICATION OF THE CONVENTION. UNDER THE HAGUE AND GENEVA CONVENTIONS,

AS WELL AS CUSTOMARY INTERNATIONAL LAW, ISRAEL IS BOUND TO APPLY LOCAL LAW, INCLUDING THAT DERIVING FROM TREATIES HAVING (AS DOES CONVENTION 111) INTERNAL EFFECT. AS PROFESSOR ROBERTO AGO STATED AT THE JUNE 1977 ILO CONFERENCE: "ALLOW ME TO SAY THAT IT IS A VERY CLEAR AND UNQUESTIONED PRINCIPLE OF GENERAL INTERNATIONAL LAW GOVERNING THE DUTIES OF AN OCCUPYING POWER, IRRESPECTIVE OF WHETHER SUCH OCCUPATION IS LEGAL OR ILLEGAL, THAT THE OCCUPYING POWER, NO MATTER WHAT ITS POSITION MAY BE, IS OBLIGED TO OBSERVE ALL THE INTERNATIONAL CONVENTIONS IN FORCE IN THE TERRITORY OCCUPIED. ALLOW ME ALSO TO EMPHASIZE THAT THIS OBLIGATION OF INTERNATIONAL LAW CERTAINLY DOES NOT APPLY FOR THE BENEFIT OF THE OCCUPYING POWER, IT APPLIES FOR THE BENEFIT OF THE OCCUPIED TERRITORY. THE AUTHORS OF INTERNATIONAL LAW, THE PRACTICE OF STATES AND INTERNATIONAL JURISPRUDENCE ARE ALL IN AGREEMENT ON THIS." AGO PERTINENTLY ALSO POINTED OUT: "LET US BEGIN BY CONSIDERING THE FACTUAL DATA. IT IS A FACT THAT CONVENTION NO. 111 HAS BEEN RATIFIED BY JORDAN, THE SYRIAN ARAB REPUBLIC AND EGYPT AS WELL AS BY ISRAEL. THERE IS NO DOUBT THAT WHEN THE ISRAELI OCCUPYING FORCES ENTERED THOSE TERRITORIES THAT CONVENTION WAS IN FORCE THROUGHOUT THOSE TERRITORIES. ISRAEL, AS A PARTY TO THE CONVENTION, IS UNDER AN OBLIGATION TO APPLY IT, BUT EVEN IF ISRAEL WAS NOT A PARTY TO THE CONVENTION, IT WOULD BE UNDER AN OBLIGATION. AS AN OCCUPYING POWER WHICH HAS TO OBSERVE THE LEGAL ORDER OBTAINING IN THE OCCUPIED

AREAS, IT IS UNDER AN OBLIGATION TO APPLY THE CONVENTIONS WHICH ARE IN FORCE IN THOSE OCCUPIED LANDS. I WOULD ALSO SAY, INCIDENTALLY, THAT IF MY MEMORY SERVES ME RIGHT, CONFIDENTIAL

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ISRAEL'S OBLIGATION TO APPLY THE PRINCIPLES ENSHRINED IN CONVENTION NO. 111 IN THE OCCUPIED TERRITORIES APPEARS IN THE RESOLUTION DATED 24 JUNE 1974 WHICH THE AUTHORS HAVE USED AS A BASIS FOR ALLEGING BREACHES OF THE CONVENTION BY ISRAEL."

(G) IN 1974, THE ARAB STATES MOVED THE ILO GENERAL CONFERENCE TO ADOPT A RESOLUTION CONDEMNING ISRAEL FOR FAILURE TO OBSERVE IN THE OCCUPIED TERRITORIES ILO CONVENTIONS 87 AND 111. THE RESOLUTION ITSELF NOTES THAT ISRAEL HAD RATIFIED THOSE CONVENTIONS. SINCE THE ARAB STATES THUS THEN MAINTAINED THAT ISRAEL WAS BOUND TO APPLY THESE CONVENTIONS IN THE OCCUPIED TERRITORIES AND HAD VIOLATED THEM, HOW CAN THEY NOW CONTEND THAT ISRAEL'S AFFIRMATION OF THE APPLICATION OF CONVENTION 111 CONSTITUTES ANY MEASURE OF RECOGNITION OF THE OCCUPIED TERRITORIES AS PART OF THE SOVEREIGN TERRITORY OF ISRAEL, OR OTHERWISE PREJUDICES THE ARAB POSITION ON ISRAEL'S STATUS IN THE OCCUPIED TERRITORIES?

(H) FOR ALL THE FOREGOING REASONS, IT ACCORDINGLY FOLLOWS THAT, WERE AN ILO GENERAL CONFERENCE TO ACCEPT THE 1977 REPORT AND ITS ANNEXES AS THEY STAND, INCLUDING THE REPORT BY ISRAEL ON WHAT IT CHOOSES TO DESCRIBE AS "ADMINISTERED AREAS", THE LEGAL AND POLITICAL POSITIONS OF THE ARAB STATES ON THE ILLEGITIMACY OF ISRAELI PRESENCE IN THE OCCUPIED TERRITORIES WOULD IN NO WAY BE PREJUDICED.

(I) FURTHERMORE, THE ARGUMENT THAT THE 1974 RESOLUTION OF THE GENERAL CONFERENCE CONCERNING THE OCCUPIED ARAB TERRITORIES DISPLACED THE AUTHORITY OF THE COMMITTEE OF EXPERTS AND THE COMMITTEE ON APPLICATION CONFIDENTIAL

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OF CONVENTIONS AND RECOMMENDATIONS IS UNPERSUASIVE. IT NOWHERE SO STATES. THE RESOLUTION INVITED THE GOVERNING BODY AND THE DIRECTOR-GENERAL TO SEEK AN END TO THE ISRAELI VIOLATIONS OF ILO CONVENTIONS TO WHICH IT REFERS AND REQUESTS THE DIRECTOR-GENERAL TO SUBMIT A REPORT; BUT IT BY NO MEANS DENIES TO THESE COMMITTEES, EXPRESSLY OR IMPLICITLY, THEIR CONSTITUTIONAL AND ESTABLISHED AUTHORITY TO DEAL WITH COMPLAINTS AGAINST THE GOVERNMENT OF ISRAEL, ON ACCOUNT OF ITS POLICIES IN THE OCCUPIED TERRITORIES OR OTHERWISE.

2. SHAKER TOOK IN FOREGOING ATTENTIVELY BUT DECLINED TO RESPOND SUBSTANTIVELY UNTIL HE HAD TIME TO REVIEW THE POINTS MADE, BECAUSE OF HIS RELATIVE UNFAMILIARITY WITH THE SUBJECT. HE UNDERTOOK TO COMMUNICATE THESE POINTS TO AMBASSADOR GHORBAL, EGYPTIAN LEGAL ADVISER EL-ARABY (WHO IS CURRENTLY AT UNGA) AND TO CAIRO AND TO BE BACK AT US SHORTLY.

3. SCHWEBEL THEN NOTED THAT, APART FROM SUCH LEGAL CONSIDERATIONS, IT WAS APPRECIATED IN THE DEPT THAT, IF SOME WAY COULD BE FOUND OF ADOPTING THE REPORT WHICH WOULD MODERATE PROBLEMS POSED BY REPLIES OF STATES CONTAINED IN THE ANNEXES TO IT, THAT WOULD BE MOST DESIRABLE. ONE POSSIBILITY THAT HAD BEEN RAISED BY AMBASSADOR EL-SHAFEI IN A CONVERSATION WITH AMBASSADOR VANDEN HEUVEL WOULD BE TO ADOPT THE REPORT AND THE ANNEXES WHILE SEPARATING OUT AND NOT TREATING THE ISRAELI REPLY. NOTING THAT HE WAS SPEAKING PERSONALLY, SCHWEBEL SAID THAT HE COULD NOT RECOMMEND THAT, AND DOUBTED THAT IT WOULD SATISFY THOSE WHO NEED TO BE SATISFIED, BECAUSE IT WOULD ENTAIL DISCRIMINATION AGAINST ONE MEMBER. HOWEVER,

SCHWEBEL WONDERED WHETHER THE FIRST PART OF THE COMMITTEE'S REPORT, THE "GENERAL REPORT", COULD BE ADOPTED IN A RESOLUTION WHICH ALSO WOULD SIMPLY "TAKE NOTE" CONFIDENTIAL

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OF THE ANNEXES WHICH INCLUDE COMMENTS OF MEMBERS. HE SAID THAT THIS IDEA HAD NOT BEEN VETTED IN THE DEPT BUT THAT HIS IMPRESSION IS THAT, WHILE IT CERTAINLY WAS NOT ESTABLISHED ILO PROCEDURE, THE ILO CONSTITUTION WOULD NOT PREVENT IT. AND, HE ADDED, IT MADE SENSE FOR THE ILO CONFERENCE NOT TO "ADOPT" THE INDIVIDUAL VIEWS OF MEMBER STATES.

4. SHAKER INDICATED THAT THAT WAS A POSSIBILITY WHICH MERITED CONSIDERATION, AND ASKED WHETHER SUCH A RESOLUTION COULD ALSO CONTAIN PASSAGES STATING THAT, IN TAKING NOTE OF THE APPENDICES, THE ILO CONFERENCE DID NOT NECESSARILY ACCEPT THE CONTENTIONS OF MEMBERS CONTAINED THEREIN OR CLAIMS TO STATUS IN TERRITORIES COVERED BY THE REPLIES OF MEMBERS. SCHWEBEL REPLIED THAT HE THOUGHT THAT SUGGESTION WAS ATTRACTIVE AND THAT, FOR OUR PART, WE WOULD GIVE IT EVERY CONSIDERATION.

6. SHAKER CONCLUDED THAT "EGYPT WANTS TO HELP" AND DESIRES TO HAVE THE USG RESUME ILO MEMBERSHIP. HABIB UNQUOTE VANCE

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Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
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Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
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